

**MINUTES**

**MONTANA SENATE  
58th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON FINANCE AND CLAIMS  
SUBCOMMITTEE ON SB 134**

**Call to Order:** By **SEN. JOHN ESP**, on February 13, 2003 at 5:00  
P.M., in Room 350 Capitol.

**ROLL CALL**

**Members Present:**

Sen. Edward Butcher (R)  
Sen. John Esp (R)  
Sen. Jeff Mangan (D)  
Sen. Dan McGee (R)  
Sen. Linda Nelson (D)  
Sen. Jerry O'Neil (R)  
Sen. Joseph (Joe) Tropila (D)  
Sen. Mike Wheat (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Prudence Gildroy, Committee Secretary  
Lynn Zanto, Legislative Branch

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: SB134, 12/27/2002  
Executive Action:

**Discussion:**

**SEN. JEFF MANGAN** said they have been working with the **Department of Revenue**, the Budget Office and the **Judiciary** in getting more clear numbers and an understanding of this situation. He passed out some sheets explaining the numbers in more detail.

**EXHIBIT (fcs32a01)**

*{Tape: 1; Side: A: Counter: 11.6}*

**Judy Paynter, Department of Revenue**, advised the **Department of Revenue** transferred the district court expenditures from the counties to the state. They have all of the costs and expenditures from the counties saved in their computer system and were able to help put together this proposal. She discussed how the expenses were broken down from the counties, how personal and non-personal services were broken down, and compared the operation and personal services expected by the Legislature compared to the Executive budget.

*{Tape: 1; Side: B: Counter: 0.6}*

**SEN. MANGAN** discussed why parts of page (a) were highlighted yellow. He said they were not sure under what categories to place those professional services.

**Director Chuck Swysgood, Office of Budget and Program Planning**, felt most of the numbers had been laid out. The only question is on the vacancy savings with the applied 4 percent. They are about \$1.7 million short of the original budget that was proposed for the biennium. He felt the area that had been highlighted concerning professional services could be put into a pool and the court could make requests to the Budget Office from that pool.

*{Tape: 1; Side: B: Counter: 4.3}*

**SEN. MANGAN** discussed option A concerning public defenders. This would be moved to the **Department of Administration** and they would have to make the determination if that would work with the money available. They would also need to see what they would need to run an efficient program out of the **Department of Administration**. They would have to decide if the state assumes the public defenders if they would become state employees effective July 1, or if they would be contracted out with counties that are currently employing them before they become state assumed, etc. They would also have to make some decisions regarding administration. In **SB 218** there is a chief public defender and some administrative staff along with additional FTE's being added to the total. They would also have to decide how much it would ultimately cost to take over the public defender program. The other part of option A keeps Juvenile Probation Officers and other district court functions under the **Supreme Court**. The same question arises as to if they have enough money, etc. and if they can use **SB 134** to utilize cost containment and clean up language.

*{Tape: 1; Side: B: Counter: 11.0}*

**SEN. DAN MCGEE** said he always wondered why Juvenile Probation officers were never a part of the **Department of Corrections** and he was told because they were county employees. Now that they are going to be state employees, he likes the idea they will become a part of the **Department of Corrections**. He would like to put the public defender program with the **Department of Administration**. He referred to sheet (b) and said they are \$1.759 million over the Executive budget. In a previous discussion, it was felt any amount over the Executive budget would be handled with a supplemental and the Chief Justice was not in favor of this. He wondered if it was still the proposal of the Budget Office to remain with the original Executive budget or increase it.

**Director Swysgood** said they presented their budget figure of \$37,311,620 to the Legislature based on the information they had at the time. With the vacancy savings applied there is about a \$1.7 million difference from the Executive budget. They are still at the original budget because they don't have an extra \$1.7 million to fund this especially with a deficit to deal with. He had no argument with the numbers given today, and if it is decided to go with the Executive Budget and the courts run short there are several ways to address that. They could increase their vacancy savings or ask for a supplemental.

*{Tape: 1; Side: B: Counter: 16.6}*

**SEN. MIKE WHEAT** asked when the Executive was preparing the budget and they came up with the \$37 million, what would have happened if they came up with the \$39,933,188 and would they have used that number.

**Director Swysgood** advised not necessarily. As they put the budget together for all other agencies, they set a target for these agencies. The Judiciary tried to make that target as it related to their other operations and the district court operation. When they looked at the overall budget for the Judiciary, which was around \$58 million, they increased the target during negotiation to address unanticipated costs. If they had increased Judiciary's funding, they would have had to reduce funding from somewhere else. When the court presents their budget, they have an obligation under law to present it to the Legislature as it was presented to the Executive. However, they do not have to include that in the budget recommendation to the Legislature. The Budget Office put the budget together on available revenue and that is where the \$37 million came from.

**SEN. WHEAT** said earlier they discussed putting money into a pool for the intangible costs. He asked the Budget Office to explain this process.

**Director Swysgood** replied when they do the pay plan bill, a contingency fund is always included and is assigned to the Budget Office. That money is used for agencies that have higher than normal expenditures for pay-outs of retirements, small agencies that have difficulty meeting their vacancy savings requirements, etc. Each fiscal year those agencies make requests, which is usually more than what is in the pool. They try to help those agencies and give them some relief. In the current pay plan bill, the contingency fund balance is about \$1.3 million for the next biennium. An option for the Judiciary for that \$1.2 million is to set up a pool to help with those requests.

**SEN. WHEAT** asked if they could create a pool just for the court system.

**Director Swysgood** advised yes.

*{Tape: 1; Side: B: Counter: 23.8}*

**SEN. JOE TROPILIA** asked if the Chief Justice had seen the handout.

**Chief Justice Karla Gray, Supreme Court,** advised only briefly.

**SEN. TROPILIA** asked about option A, B, or C and wanted to know what the Chief Justice's feeling was on Juvenile Probation going to the **Department of Corrections**.

**Chief Justice Gray** said nothing could be more tragic for 15,000 Montana kids than to take them out of the Youth Court system that the Legislature crafted so well to serve kids and their families. It was crafted to serve them in the communities of local people who try to keep them away from the **Department of Corrections**. It is not about projected savings; the Legislature created the Youth Court system and it is a good system. However, this could affect 15,000 kids who would have to go to the **Department of Corrections**, and deal with a Juvenile Probation and Parole officer, when the whole purpose of the youth court act is to keep kids away from Corrections.

**SEN. MCGEE** contended he is not trying to unravel the Youth Court system, but is looking at the administration of Juvenile Probation. He didn't think the Youth Court system will be affected if they are only putting the administrative part with the **Department of Corrections**.

**Chief Justice Gray** said she is concerned with where they are going to park the administration of judicial employees. She didn't know how they would separate function from cost and the

administration of those costs. Juvenile probation officers are defined as part of the Youth Court and they are not separate employees. The Judge, the probation officer and the assessment officer are the Youth Court.

**Director Swysgood** advised if the Legislature decides to split up some of the entities within the district court such as public defenders and probation officers, then that pot of money would be available to all entities that are associated in the current district court assumption.

*{Tape: 2; Side: A: Counter: 1.6}*

**CHAIRMAN JOHN ESP** highlighted the proposals before them. They have the proposal from the Judiciary with the counties sharing some of the risk. The other options keep all functions within the judicial system. He indicated the committee needs to focus on a direction and language that needs to be implemented into the two bills that they have before them.

**SEN. WHEAT** asked if they could hear SB 388 in Judiciary as soon as possible as it is a part of their options to find out what the feelings are of the Chief Justice, the courts, probation officers, etc.

**SEN. TROPILIA** said he would also like to know what the county commissioners have to say on this issue.

**SEN. MANGAN** said if the state is going to assume costs and regardless of how they are broken up, the committee needs to begin working on language for **SB 134**. He has also done some work on getting language from **SB 218** on public defenders moved over and this needs to be done ASAP.

*{Tape: 2; Side: A: Counter: 6.6}*

**CHAIRMAN ESP** said they need to decide on a direction and if they need to change the language in these bills. If they go with some of the options that have been mentioned, then there is language that needs to go into **SB 134**.

**SEN. WHEAT** said when they heard testimony on **SB 218** in Judiciary, the Chief Justice was in favor of transferring the public defender system over to the **Department of Administration**. He urged the committee to go ahead with the language that is in **SB 218**. He indicated the only thing still bothering him is the transferring of Juvenile Probation officers and he would like to get a handle on this.

**SEN. MANGAN** advised he would like to take a poll on **SB 218**.

**CHAIRMAN ESP** asked each member to comment on **SB 218**.

**SEN. TROPILIA** felt the Chief Justice is busy enough with the **Supreme Court** and the **District Court** system should be put somewhere else.

**SEN. EDWARD BUTCHER** felt the District Court system should be moved to the **Department of Administration**.

**SEN. WHEAT** reported the District Court Judges in Gallatin County did not like state assumption, but understand they cannot put the toothpaste back in the tube. The committee needs to move forward to a statewide **Public Defender** system, which is **SB 218**.

**SEN. LINDA NELSON** stated she also felt that the public defenders belong with the **Department of Administration**.

**SEN. MCGEE** advised favoring the **Public Defender** system being moved to a different department. He felt they could move forward with **SB 218**. He felt good about the numbers presented and felt they were accurate.

**SEN. MANGAN** said he would start work on **SB 218**.

**SEN. TROPILA** felt the state should pay all of the bills rather than reimbursing the counties and having them pay the bills.

*{Tape: 2; Side: A: Counter: 14.5}*

**CHAIRMAN ESP** said one thing they need to consider is the year of the *Bar-Jonah* case and the large case in Glendive. Those costs don't necessarily add up to the numbers of other years. He felt that there needed to be some sort of mechanism to handle situations like that. He wanted the **Supreme Court** to let the committee know if their numbers are accurate and the breakdowns are correct.

**SEN. MANGAN** said the **Executive Branch** and the **Supreme Court** recognized some personnel shifts and those would be corrected. **Ms. Paynter** advised they had already worked those numbers out and they are correct.

**CHAIRMAN ESP** wondered if **SEN. WHEAT** would work with **SEN. MANGAN** on **SB 218** and **SEN. WHEAT** agreed.

**CHAIRMAN ESP** asked if **SEN. NELSON** would work on **SB 134** with him.

**SEN. WHEAT** said he would like the members of the committee to come to Judiciary when they hear SB 388.

**Gordon Morris, MT Assoc. of Counties,** complimented the committee for their hard work on these bills.

**ADJOURNMENT**

Adjournment: 6:30 P.M.

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SEN. JOHN ESP, Chairman

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PRUDENCE GILDROY, Secretary

JE/PG

**EXHIBIT (fcs32aad)**